IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.860 OF 2005

Dr.Arun Kumar Prasad. ..Applicant.

V/s.

C.B.I.Special Crime Branch,
Mumbai & Anr. ..Respondents.

Mr.Madhav Jamdar for applicant.

Mr. D.N.Salvi for respondent No.1.

Ms. Geeta Mulekar, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 24, 2005.

P.C. :

1. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith by consent.

3. Mr.Salvi waives notice for respondent No.1. Ms. Mulekar waives notice respondent No.2. By consent, petition is taken up for final disposal forthwith, as short question is involved.

4. The present petition is for quashing the complaint filed against the applicant/accused No.19 who has been charged alongwith other accused for

offences of rioting, murder, rape, destruction of evidence, more particularly, the offence punishable under section 143, 147, 148, 302, 376, 201, 217 and 218 of I.P.C.1860 for having entered into criminal conspiracy pursuant to call given by Vishwa Hindu Parishad for Gujarat Bandh as a result of a compartment of the train returning from Ayodhya with Karsevaks was set ablaze at Godhra Railway Station on 27th February, 2002 and in sequel thereto there were incidents on large scale of attacks targeting Muslims in Gujarat, and thereby committed an offence punishable 120-B I.P.C. 1860.

5. It is not necessary to burden this judgment with the entire evidence on record. Suffice it to observe that the Godhra incidence took place on 27th February, 2002, as a consequence to that incident rioting, murder and rape took place and the incident which is relevant in the present trial is stated to have been committed on 3rd March, 2002. Complaint in respect of the incident in question has been filed on 4th March, 2002. On the basis of that complaint investigation commenced and bodies of dead persons were recovered. It is the prosecution case that the investigating officer asked the applicant to accompany the investigating team to the spot where

the applicant was asked to perform post mortem. Indeed, the Investigating Officers who asked the applicant to accompany them for the purpose of post mortem to be carried out on the dead body at the site where the bodies were recovered, are tried as accused alongwith the applicant. The fact remains that the role of the applicant even accepting the prosecution case as it is, is from the stage where he has been asked by the police officer to accompany for purpose of carrying post mortem on the dead body on the spot.

6. Be that as it may, there is absolutely no evidence so as to indicate complicity of the applicant in relation to the offence of rioting, murder and rape or for indulging in conspiracy to commit those offences. Learned APP on instruction of Mr. Sinha, Dy. Investigating officer fairly accepts this position. Learned APP has fairly accepted on instructions that he is not in a position to point out any material from the record so as to connect the applicant with the evidence of rioting, murder and rape and/or for entering in conspiracy for committing those offences. If it is so, it will be absurd to try the applicant for offences of rioting, murder and rape alongwith other accused persons. It necessarily follows that the charge firstly will have to be

confined against the applicant regarding the allegation of destruction of evidence and at best conspiracy with regard to the offence of destruction of evidence.

7. Counsel for the applicant fairly accepts that although by this petition, applicant has asked for quashing of the entire charge firstly, however, he would confine the argument only to the above extent of quashing the charge in so far as offences of rioting, murder and rape and unlawful assembly and conspiracy in relation to such offences is concerned. It is made clear therefore, that charge firstly will have to be confined against the applicant only for offence of destruction of evidence and of conspiracy in relation to that offence.

8. Petition succeeds on the above terms.